



2010-026

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

December 31, 2009

Honorable Doris A. Hearn
Chairperson, Baldwin County Board of Registrars
Post Office Box 1507
Bay Minette, Alabama 36507-1507

Registrars, Board of – Compensation
– Expenses – Holidays - Voter
Registration

Members of the Baldwin County Board of Registrars are entitled to compensation for five working days each week for days actually worked, but those days must be worked during normal courthouse hours Monday through Friday, except for special registration sessions held away from the courthouse.

Members of the board are entitled to holiday compensation if a legal holiday falls on one of the working days and the county closes the courthouse for that holiday.

Only special registration sessions that are approved by a majority of the board, are open to the public, and are properly advertised qualify as special registration sessions in which a board member may receive compensation and travel expenses.

The members of the Baldwin County Board of Registrars are entitled to compensation for a working day and travel reimbursement for attending

Honorable Doris A. Hearn
Page 2

and making a presentation at a meeting of the State Voter Registration Advisory Board ("Advisory Board") when the registrars have a matter pending before the Advisory Board.

Registrars must provide documentation, as requested, to the county commission and/or to the State Comptroller to receive compensation and travel expenses from the county and the state.

Dear Ms. Hearn:

This opinion of the Attorney General is issued in response to your request on behalf of the Baldwin County Board of Registrars.

QUESTIONS 1 & 2

Are the members of the Baldwin County Board of Registrars entitled to compensation for five working days each week, and may the board members receive compensation for working on a Saturday?

Under what circumstances are members of the board of registrars entitled to receive compensation for holidays?

FACTS AND ANALYSIS

Section 17-3-5 of the Code of Alabama sets forth the compensation and allowances for registrars. This section states, in pertinent part, as follows:

(a) Each registrar shall receive a salary in the amount of sixty dollars (\$60) per day for *each day's attendance upon business of the board*, to be paid by the state and disbursed to the county commissions and disbursed by the county commissions to each registrar on order of a quorum of the board of registrars of the county.

The state Comptroller shall issue to each county commission on a monthly basis an amount sufficient to fund these payments plus the employer share of the Social Security or Federal Insurance Corporation Act tax. The county commission will provide to the state Comptroller an invoice itemized to reflect payments made. ***If a legal holiday falls on a day the board is to be in session, and the courthouse of the county is closed for the holiday, the board of registrars shall be compensated for the holiday.*** Each registrar shall ***receive a mileage allowance*** equal to the amount allowed state employees or employees of the county, whichever is greater, ***for official travel in the course of attending the business of the board***, including attending continuing education programs. Travel and other expenses shall be paid by the county commissions to the boards of registrars and the state shall reimburse the county commissions based on a written request submitted by the county commissions to the state Comptroller.

ALA. CODE § 17-3-5 (2006) (emphasis added).

Section 17-3-8 of the Code of Alabama establishes the maximum number of “working days” that each member of the board of registrars may meet. ALA. CODE § 17-3-8 (2006). The maximum number of “working days” varies by county, ranging from 120 days per fiscal year to a maximum of five days per week. *Id.* The Baldwin County Board of Registrars is authorized to meet “not more than five days each week for the purpose of carrying out their official duties.” *Id.* A quorum of the board is authorized to determine the actual number of those working days that will be used as session days, days that the board meets as a body to conduct business. *Id.*

Before 1988, the term “working day” was not used in the Code and section 17-3-8 (formerly section 17-5-156) authorized the board to meet for a maximum number of “session days.” 1988 Ala. Acts No. 88-985, 711. Section 17-3-8 also contained a provision that required, on any day the full board did not meet and the courthouse was open, at least one member of the board must be in attendance at the courthouse to accept applications and attend to the clerical duties of the board. The 1988 act removed the requirement that one member must be in attendance at the courthouse when the courthouse is open and the full board does not meet. *Id.*

This Office has been informed, however, that the boards have continued the practice of individual board members working in the board's office to receive applications and attend to other clerical duties of the board on those days when the board does not meet as a body, utilizing the maximum number of working days available for each board. The schedules have varied by county based upon the session days scheduled by the board, by individual board member's schedules, and the number of working days available in a particular county. *See* opinion to Honorable Jerry C. Pow, Judge of Probate, Bibb County, dated April 7, 2004, A.G. No. 2004-112. This opinion also noted that the law does not specify the number of hours a board member must work, but the registrars should take into consideration the number of hours that the courthouse is open for business and the number of hours that employees for the county must work when claiming compensation for a "working day." *Id.*

Based upon the foregoing, the law contemplates that the registrars, in most cases, will be working when the courthouse is open for business during normal work days, Monday through Friday, and thus available to the public. Accordingly, a member of the Baldwin County Board of Registrars is entitled to compensation for five working days each week for days actually worked, but those days must be worked during normal courthouse hours Monday through Friday, except for special registration sessions held away from the courthouse, which will be discussed later in this opinion.

Section 17-3-5 provides for holiday compensation, stating that registrars are entitled to paid holidays when a session day, or what is usually referred to now as a working day, falls on a legal holiday and the courthouse is closed for the holiday. The legal holidays are set forth in section 1-3-8 of the Code of Alabama and include certain specifically enumerated holidays and those additional holidays declared by the Governor. ALA. CODE § 1-3-8 (Supp. 2009).

As previously stated, the registrars in Baldwin County are entitled to compensation for five working days each week. Thus, if a legal holiday falls on one of the work days on Monday through Friday, and the county closes the courthouse for that legal holiday, the board members in Baldwin County are entitled to be paid for that holiday. Because all county courthouses in the state are not automatically closed on all the legal holidays, the county commission must provide some notification to the State Comptroller of the legal holidays in which the courthouse was closed when submitting invoices to the Comptroller for payment under section 17-3-5 of the Code.

CONCLUSION

Members of the Baldwin County Board of Registrars are entitled to compensation for five working days each week for days actually worked, but those days must be worked during normal courthouse hours Monday through Friday, except for special registration sessions held away from the courthouse. Members of the board are entitled to holiday compensation if a legal holiday falls on one of the working days and the county closes the courthouse for that holiday.

QUESTION 3

Under what circumstances are registrars entitled to compensation and travel expenses for attending special registration sessions?

FACTS AND ANALYSIS

Section 17-3-8(f) of the Code of Alabama sets forth the authority to hold special registration sessions and states as follows:

(f) As many as 25 of the allotted working days may be used for special registration sessions (i.e., those sessions held away from the courthouse in the several precincts of the county or sessions held on Saturday or between the hours of 5:00 P.M. and 9:00 P.M.). Notice of any special session scheduled by the board shall be given at least 10 days prior to the special session by (1) bills posted at three or more public places in each election precinct affected, if the session involves precinct visits, *and* (2) advertisement once a week for two successive weeks in a newspaper published in the county *or* by radio *or* television announcements on a local station, or both by newspaper or announcement.

ALA. CODE § 17-3-8(f) (2006) (emphasis added).

This section authorizes board members to conduct special voter registration session outside the courthouse and in the various precincts of the county. These sessions may be held on Saturday or between the hours of 5:00 p.m. and 9:00 p.m. Questions have been raised as to how these

Honorable Doris A. Hearn

Page 6

special registration days may be approved, the notice to be provided, and the locations of the sessions.

Section 17-3-7 (formerly 17-4-155) of the Code of Alabama provides that the "action of a majority of the board of registrars shall be the action of the board, and a *majority of the board shall constitute a quorum for the transaction of all business.*" ALA. CODE § 17-3-7 (2006) (emphasis added). This Office has previously stated that, based on this provision, the chair of the board of registrars cannot unilaterally exercise the authority of the board. Opinion to Christopher W. Hargett, District Attorney, Russellville, dated April 27, 1989, A.G. No. 89-00256; opinion to Charles D. Langford, State Senator, 26th District, dated August 29, 1988, A.G. No. 88-00438.

This Office has also concluded, based on this provision, that the board may act, take actions, and conduct business only by a majority vote of the board. In the same manner, a single member of the board of registrars cannot unilaterally exercise the authority of the board. Accordingly, a member of the board of registrars cannot unilaterally schedule voter registration appointments at high schools or other locations and collect travel and other expenses for those appointments. These actions constitute a part of the business of the board and require approval by a majority of the board of registrars. Opinion to Honorable William R. Popwell, Chairman, Chilton County Board of Registrars, dated August 24, 2005, A. G. No. 2005-186.

Thus, a majority of the board of registrars may approve a special registration session to be conducted away from the courthouse on a Saturday or after normal works hours between 5:00 p.m. and 9:00 p.m., and ten days' notice of the special session must be given to the public as provided by section 17-3-8. The statute requires that notice be posted at three or more public places in each election precinct affected and advertised once a week for two successive weeks in a newspaper, or by radio or television, or both newspaper and announcement.

This Office has been informed that, in many instances, the board chooses to use radio or television announcements in addition to posting the notices in three or more public places. Announcements on radio or television, in addition to posting notices in three or more public places, are allowed instead of newspaper notices, provided the announcements on radio or television are made at least once a week for two successive weeks.

A registrar may unilaterally attend a function and accept voter registration applications from persons attending that function, but that function may not be treated as a special registration session for purposes of section 17-3-8(f) of the Code. Only special registration sessions that are approved by a majority of the board, are open to the public, and are properly advertised qualify as special registration sessions in which a board member may receive compensation and travel expenses. There are no provisions in the Code that authorize a board member to receive compensation or travel expenses for attending private registration drives and/or registration drives that are not open and advertised to the public. Board members may choose to attend these "private" registration drives, but must do so on their own time and at their own expense.

CONCLUSION

Only special registration sessions that are approved by a majority of the board, are open to the public, and are properly advertised qualify as special registration sessions in which a board member may receive compensation and travel expenses.

QUESTION 4

Are registrars entitled to compensation and travel expenses for attending a meeting of the State Voter Registration Advisory Board?

FACTS AND ANALYSIS

The State Voter Registration Advisory Board is an oversight board created to perform several duties, including the duty to advise and consult with the Secretary of State concerning the statewide voter registration file maintenance system and to make recommendations to the Legislature and the Governor regarding improvements needed to the system. ALA. CODE § 17-4-34 (2006). The Supervisor of Voter Registration is an employee of the Secretary of State's Office and is required to keep the minutes of the Advisory Board, conduct the day-to-day business activities of the Advisory Board, and give progress reports of those activities to the Advisory Board at its meetings. ALA. CODE § 17-4-35 (2006).

Members of the Advisory Board do not receive compensation for service on the board, but are entitled to reimbursement for traveling and other expenses incurred in the performance of their duties. These expenses are to be paid in the same manner and amount as is provided for

Honorable Doris A. Hearn

Page 8

other state officers and employees traveling on official business for state departments and agencies. ALA. CODE § 17-4-34 (2006). This Office has been informed that the travel expenses paid to the members of the Advisory Board are paid through the Secretary of State's Office from the voter registration fund. This Office has also previously determined that a registrar who is a member of the Advisory Board is not entitled to compensation provided to registrars for a working day when the registrar is attending a meeting of the Advisory Board as this is not considered business of the board of registrars. Opinion to Honorable Joanne Anderson, Chairman, Morgan County Board of Registrars, dated May 6, 1994, A.G. No. 94-00180.

Your request states that members of the Baldwin County Board of Registrars traveled to Montgomery to make a presentation to the Advisory Board concerning voter registration issues occurring in Baldwin County and the need for changes. You seek clarification as to whether you are entitled to compensation for a working day as a registrar for attending and making a presentation at this meeting of the Advisory Board, as well as travel reimbursement. In this case, the registrars were on the agenda and presented an issue to the Advisory Board that related to the duties and business of the board of registrars. It is the opinion of this Office that the members of the Baldwin County Board of Registrars who attended the meeting of the Advisory Board were attending to business of the board of registrars.

Their attendance at this meeting can be distinguished from the attendance of registrars who attend as members of the Advisory Board. Accordingly, the registrars are entitled to compensation for a working day and to travel reimbursement as set forth in section 17-3-5 of the Code (from the county and the State Comptroller) for attending to official business of the board. This opinion should not be interpreted to mean that all registrars who merely attend meetings of the State Voter Registration Advisory Board are entitled to compensation and travel reimbursement for attendance at a meeting of the Advisory Board.

CONCLUSION

The members of the Baldwin County Board of Registrars are entitled to compensation for a working day and travel reimbursement under section 17-3-5 of the Code for attending and making a presentation at a meeting of the State Voter Registration Advisory Board when the registrars have a matter pending before the Advisory Board.

QUESTION 5

Are registrars required to provide any documentation to the county commission or the State Comptroller to receive compensation and travel expenses from the county and the state?

FACTS AND ANALYSIS

Section 17-3-5 of the Code requires the state to reimburse the county for the compensation and travel expenses paid by the county to the registrars. ALA. CODE § 17-3-5 (2006). The county is specifically required to provide an itemized invoice on a monthly basis to the State Comptroller. These invoices must be based on requests for payments from the registrars, which must be based on an order of a quorum of the board of registrars. The law does not specifically provide the type of documentation that must be provided by the registrars to the county and to the State Comptroller. The Code does state that “the county commission will provide to the State Comptroller an invoice itemized to reflect payments made.” *Id.* Both the county commission and the State Comptroller have the general authority to prescribe the accounting documentation needed for appropriate documentation of compensation and travel expenses. ALA. Code §§ 11-3-11 & 11-3-18 (2008); ALA. CODE § 41-4-57 (2000).

CONCLUSION

Registrars must provide documentation as requested to the county commission and/or to the State Comptroller to receive compensation and travel expenses from the county and the state. Given that there has been some confusion and questions as to the proper compensation and reimbursements to be made to the registrars, this opinion should be applied prospectively.

Honorable Doris A. Hearn
Page 10

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS
885338/137166